
JDB



Guide to **Leases**

Landlord negotiations **start here...**

There are two points in time where you will have to carry out negotiations with your landlord; one being when you move into the property, the other being when you are trying to move out of the property.

Market conditions dictate who has the upper hand in lease negotiations

In theory, the occupier should have the upper hand, but this really depends on the market. Market conditions can dictate your negotiating power when purchasing a lease. In an upward or even a level market although you would think as the future occupier you would have the upper hand, often it can feel as though the odds are stacked against you.

The commercial agents (or estate agents as they are commonly known) will typically withhold information which may lead to you making decisions with very little information to guide you. They will offer a Heads of Terms, which will be talked about as if it is cast in stone but will often be negotiable. Of course they are simply doing their job to return the best possible deal for the vendor or the landlord. Remember that they will often be negotiating several different deals at the same time and, for prospective occupiers/tenants it can feel like you are banging your head against a brick wall. Please take note, all is not lost, you can engage your own independent advice!

Where to seek advice when purchasing a lease (watch out for vested interest)

First of all, will you really get good impartial advice from someone with a vested interest? In this case the commercial or estate agent has a vested interest in getting the property let.

No matter how friendly they become you need to remember that becoming a friend and feeling as if they are on your side is part of the salesmanship. Once the property is let or sold they get their fee and their interest in you will subside as they concentrate on the next deal.

Negotiating the right price with your landlord

It should come as no surprise that commercial agents like to push rent levels upwards; they get paid on a percentage basis of the rental fee. You must ensure that you negotiate the right price first time round. If you get the figures wrong and you can't make a profit whilst paying the rent you are effectively working to keep the landlord in a custom to which he sees fit. To get out of your lease, you might have to pay for certain works or even subsidise the rent of the new person coming in.

Let us look a bit more about negotiations with your landlord on a new lease.

If you need help and advice with regard to leases, dilapidations, schedules of condition, dilaps claims, scott schedules, building surveys, structural reports, engineers reports, specific defects report, structural surveys, home buyers reports or any other property matter please call 0151 486 3437 for a friendly chat.

Negotiations with your landlord on a **new lease...**

Firstly, if you could actually speak directly to your landlord we feel this is far better than speaking via a commercial agent. Plus you get the truth and you also get their undivided attention. Usually a commercial agent is dealing with several properties at once, if not more. They know it is to their advantage not to get back to you quickly. They want to sell to a desperate purchaser rather than appear to be a desperate seller.

You need to work out what the lease is worth to you and this needs to be your absolute top price. You need to remember that in most cases, unless it is an established business, the figures that you produce may be on the pessimistic side, even those figures that you think are low expectations tend to be on the pessimistic side, so you need to be realistic. Often the best way to do this is to get opinions from other people in the industry; if you know someone that you can trust that won't be looking to take advantage of the same opportunity get a reality check from them.

Appointing a Chartered Building Surveyor

The next step, we believe, is to appoint a Chartered Building Surveyor to actually survey the property and see what problems there are. There are inevitably always problems. You need to then establish whether they are problems to you and if you need to negotiate on the price. You also need to understand your level of risk, for example a super low rent may be present because the level of maintenance required is vast and you are about to sign a full repairing and insuring lease, which means that you will be liable for the vast maintenance the very next day.

Schedules of Condition

Q. Why should you instruct a Full Building Survey and Schedule of Condition before you sign the lease?

A. *The rent stated is never the only rent option. In the past we have helped to get rents reduced and stepped (this means that they start off at one level and gradually step up to the rent that was originally advertised). We have also obtained rent free periods after our survey has discovered disrepair and maintenance works that the landlord doesn't want to rectify but wants you to rectify. Also, where disrepair and maintenance works has been extreme, we have managed to exclude unwanted floors or parts of a building which then remain the landlord's maintenance responsibility.*

It could be argued that landlords and their agents wish to do little else but collect rent. Any maintenance requirements will be at the back of their minds, or in the long grass, to coin a phrase that we recently heard that we like.

You only get one chance to negotiate the lease right

It is not unknown for businesses to go bankrupt because they didn't negotiate the lease at the correct level from the start. We often hear tenants say that the rent was X and they have managed to reduce it to half X or ten per cent of X, or whatever. The problem is that X is a figure that the landlord thought of and is not the figure that the property was actually worth in the first place. This is what you need to establish.

Negotiating with the landlord when you are **ending the lease...**

There are two instances when you come to the end of a lease:

- 1. Planned. This can be at a break clause point or at the end of the lease.**
- 2. Getting out because you simply can't afford to be there anymore.**

Let's look at the planned stages first.

Break clauses; negotiating your way out of a lease

Any fool can get a lease it's getting out of it that's the hard bit.

During the negotiation stage a landlord will offer break clauses to entice you into taking the lease. They will however (if they know what they are doing) make these break clauses fairly hard to comply with and as such you will have to ensure that the condition of the property is to the required standard, that all due rents are paid, the insurance is paid, etc, etc, etc.

There are many examples where companies thought that they had broken the break clause but continued to be charged rent by the landlord. Thus followed a legal case where it was deemed that they hadn't actually met all of the requirements of the break clause and therefore the landlord was quite within his right to carry on charging them rent. In addition to rent they still have to pay rates, plus the costs of whatever new building they had moved into.

The end of a lease

When the lease comes to an end it may be a time of joy because you can move onto new premises, perhaps one that's a more appropriate size for your business, as it is now bigger or smaller. Equally, it can be a period of pain when the good rent that you negotiated finally comes to an end.

Either way, the lease needs to come to an end in an organised manner. The landlord has the right to serve a Schedule of Dilapidations, which is a list of work that needs to be done to the premises by the tenant (under the terms of the lease). The RICS (Royal Institution of Chartered Surveyors) recommend serving a schedule before, or fairly soon after the lease ends. It is however sometimes a tactic employed by landlords to delay service of the schedule, this tactic is more likely to lead to a monetary only settlement being agreed. This is literally where the landlord can have his cake and eat it. Indeed, sometimes the dilapidations claim is a major reason for landlords buying property.

Having to leave (yield up) a lease because you are going under

Ironically, this can often be the easiest way to leave (yield up) a lease, as the landlord appreciates that you don't have much money and often just allows you to leave without investigating the work that would have ultimately been identified within the Schedule of Dilapidations. However, it should be remembered that leases can be under-written against the company director's homes, etc, so there can be a sting in the tail!

We hope you found this article interesting and if you have any experiences that you feel should be added to this article that would benefit others, then please do not hesitate to contact us.

The contents of this article are for general information only and is not intended to be relied upon for specific or general decisions. Appropriate independent professional advice should be sought before making such a decision.

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